

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**
Alexandria Division

In re:

BURTON MORTIMER GREEN, III and
DEBORAH DENISE GREEN,

Debtors.

Case No. 00-13454-RGM
(Chapter 13)

MEMORANDUM OPINION

THIS CASE was before the court on the debtors' objection to the proof of claim filed by Arcade Electronics, Inc., ("Arcade") and the debtors' motion for Rule 9011 sanctions. The debtors and Arcade entered into a stipulation which was filed of record. The stipulation sets forth the payments that were made.

The court computed the present balance of the Arcade judgment. The court concludes that proof of claim number 18 has been paid in full, and in fact, has been paid \$709.84 more than the amount asserted by it. The court has attached to this memorandum opinion its computation of the amount due on the Arcade proof of claim.

The proof of claim is based on a judgment obtained against the debtors and Betty M. Dean on June 14, 2000, in the Circuit Court for the City of Alexandria. The judgment was in the principal amount of \$37,282.09. It included pre-judgment interest of \$3,612.63, attorney's fees of \$7,456.42, and court costs of \$112.00, for a total of \$48,463.16. The order provides that interest will accrue at the judgment rate on \$37,282.09, which is the principal amount of the debt. The judgment rate was 9%.

Betty M. Dean filed a voluntary petition in bankruptcy pursuant to chapter 7 of the United States Bankruptcy Court in this court on January 25, 2002. Her trustee paid Arcade \$53,800.88. To determine how much is owed by the Greens, it is necessary to determine how much of that payment constituted amounts that should be credited to the claim filed in the Greens' case.

The Greens filed their voluntary petition in bankruptcy on August 17, 2000. Consequently, the claim in the Dean case is larger because interest accrued from the date the Greens filed bankruptcy on August 17, 2000 until Dean filed bankruptcy on January 25, 2002. This additional interest is not a part of the proof of claim in the Green case. Consequently, if any part of the \$50,800.88 is attributable to that interest, that portion cannot be credited against the Green claim.

Similarly, any amounts paid by the Greens in their bankruptcy case, should also be a credit against the amounts due by Ms. Dean. The Greens' trustee made two payments, one on May 1, 2002, and the other on June 1, 2002. Those payments, applied in the light most favorable to the creditor, are applied first to the costs of the judgment (\$112.00), then to the attorney's fees recovered (\$326.87). The second payment from the trustee on June 1, 2002, is credited towards the attorney's fees on the judgment (\$137.97). Consequently, when Dean's trustee made the payment to Arcade, the balance on the proof of claim due to Arcade was \$53,300.89. This was almost \$500.00 less than the amount paid by the trustee. This amount was applied first to the balance of attorney's fees due on the judgment of \$6,991.58, then pre-judgment interest of \$3,612.43, and finally, post-judgment interest of \$5,414.59. The principal amount credited to Arcade's judgment was \$37,782.08. When all is said and done, it appears that Arcade's proof of claim filed in the Dean's case was overpaid by \$499.99. This probably results from two differences in computing that amount in the Green case. The first was probably the two payments made by the trustee in the Greens' case which was not

credited in the Dean's case, and the second is probably difference in the computation of interest. This court used a 365-day year.

To compute the amount due in this case, it is necessary to take the amounts that were paid on this same judgment in the Dean's case that are also included in the proof of claim in this case. Those amounts are the amounts applied to principal, the balance of the attorney's fees, the pre-judgment interest, and post-judgment interest up to the date of the filing of the petition. Post-judgment interest in the Dean's case that was \$5,414.59; in the Greens' case, \$569.96. Consequently, only \$569.96 of the post-judgment, but pre-Dean's bankruptcy interest, was also claimed in the Greens' case. The rest is not included in the Greens' proof of claim and credit cannot be given to the proof of claim in this case. The court notes that in the spreadsheet that it presented to counsel on June 23, 2004, that the court did not take into account that 62 of the 589 days of post-judgment, but pre-bankruptcy interest are the same 62 days. In both the Greens' case and the Dean's case, the number of days reflected are the number of days from the date of the judgment through the date of the filing of the petition. The first 62 are the same days in both cases. Consequently, the number in cell E-25 should be \$569.96, as is reflected on the spreadsheet attached to this memorandum opinion, and not zero as reflected on the spreadsheet given to counsel at the hearing. In all, Arcade has been paid \$709.84 more than its proof of claim in this case. Whether it should even have been paid that amount is a question not presented because this plan is a compromise plan. This case was not to pay all claimants in full, but only a percentage.

The principals that are involved in the computations are these:

1. The proof of claim in each case has to be analyzed to determine what elements are common between the two of them. The only element that is different in the Dean's case is the

additional post-judgment but pre-petition interest, that is the interest that ran from August 17, 2000 to January 25, 2002, the dates of the filings of the two petitions in bankruptcy. But for this amount, all amounts paid in the Dean's case should be credited in the Greens' case.

The second principal is that the creditor is not entitled to post-petition interest unless it is a secured creditor, and then, only to the extent that the allowed secured claim is secured by property, the value of which is greater than the claim. 11 U.S.C. § 506(b). In that event, additional post-petition interest, attorney's fees, and other costs provided for in the agreement, are recoverable. In this case, Arcade is an unsecured lender because its lien has been avoided because it impairs the debtors' exemption. The lien will not be released unless the debtors complete the plan. Nonetheless, Arcade is an unsecured creditor. Consequently, it is not entitled to any additional post-petition interest in this case. Similarly, the order in the Dean's case reflected that the amount of interest was limited. The court will continue the matter to **July 14, 2004 at 9:30 a.m.**, to allow the parties to further review the computations. If they are able to reach an agreement, they may submit an order and the matter will be removed from the docket. Otherwise, they should file further pleadings that describe any issues that may remain.

The chapter 13 trustee should not make any further distributions to Arcade in this case pending further order of this court.

The debtors also requested sanctions under Rule 9011. For the reasons stated from the bench, the motion will be denied.

Alexandria, Virginia
June 25, 2004

/s/ Robert G. Mayer
Robert G. Mayer
United States Bankruptcy Judge

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